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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

CENTER FOR BIOLOGICAL DIVERSITY
and SIERRA CLUB,

Plaintiffs/Petitioners,

vs.

CALIFORNIA DEPARTMENT OF
CONSERVATION, DIVISION OF OIL,
GAS, AND GEOTHERMAL RESOURCES;
and DOES 1 through 100, inclusive,

Defendants/Respondents.

WESTERN STATES PETROLEUM
ASSOCIATION, CALIFORNIA
INDEPENDENT PETROLEUM
ASSOCIATION and INDEPENDENT OIL
PRODUCERS AGENCY,

Respondents-in-Intervention.

Case No. RG15769302

INDUSTRY GROUPS' REQUEST FOR
JUDICIAL NOTICE OF TRANSCRIPT
OF COURT HEARING IN
OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION

Date: July 2, 2015

Time: 9:00 a.m.

Dept.: 17

Judge: Hon. George C. Hernandez, Jr.

Action Filed: May 7, 2015

Trial Date: None set

1 Pursuant to Evidence Code sections 450 *et seq.*, Respondents-in-Intervention
2 Western States Petroleum Association, California Independent Petroleum Association and
3 Independent Oil Producers Agency (collectively, “Industry Groups”) respectfully request
4 that this Court take judicial notice of the transcript of proceedings from the June 15, 2015
5 hearing on motions to intervene before this Court, attached as Exhibit 1 to this request. The
6 Evidence Code mandates judicial notice of matters that comport with the requirements of
7 section 452, provided that the requesting party gives adequate notice to adverse parties and
8 includes sufficient information to enable the Court to take judicial notice. Evid. Code,
9 § 453. Section 452(d) provides that “[r]ecords of (1) any court of this state or (2) any court
10 of record of the United States or of any state of the United States” may be judicially
11 noticed. Exhibit 1, a transcript of a hearing before this Court, falls within the category of
12 court records appropriate for judicial notice.

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14 Dated: June 19, 2015.

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WESTERN STATES PETROLEUM
ASSOCIATION, et al.

EXHIBIT 1

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
BEFORE THE HONORABLE GEORGE C. HERNANDEZ, JUDGE
DEPARTMENT 17

CENTER FOR BIOLOGICAL)
DIVERSITY, and SIERRA CLUB,)
non-profit corporations,) CASE NO. RG15769302
)
Petitioners,)
)
vs.)
)
CALIFORNIA DEPARTMENT OF)
CONSERVATION, DIVISION OF)
OIL, GAS, AND GEOTHERMAL)
RESOURCES, and DOES 1 through)
20, inclusive,)
Respondents.)
)
)
)
)
AERA ENERGY LLC, BERRY)
PETROLEUM COMPANY, LLC,)
CALIFORNIA RESOURCES)
CORPORATION, CHEVRON U.S.A.,)
INC., FREEPORT-MCMORAN OIL)
& GAS, LLC, LINN ENERGY)
HOLDINGS, LLC, and)
MACPHERSON OIL COMPANY,)
)
Respondents in Intervention.)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
JUNE 15, 2015
REPORTED BY: KATHRYN LLOYD, CSR NO. 5955
JOB NO: 575153

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1 JUNE 15, 2015

4:55 P.M.

2 PROCEEDINGS

3 THE COURT: This is the Center for
4 Biological Diversity versus Cal Department of Oil,
5 Gas and the like.

6 And who do we have here today, starting
7 with the Plaintiffs?

8 MR. ROSTOV: William Rostov on behalf of
9 the plaintiffs.

10 MR. KRETZMANN: Hollin Kretzmann for the
11 plaintiffs.

12 MS. PARDEE: Vera Pardee for the
13 plaintiffs.

14 MR. DINTZER: Good afternoon, your Honor.
15 Jeffrey Dintzer on behalf of Aera Energy, Berry
16 Petroleum, California Resources Corporation, Chevron,
17 Freeport McMoran, Linn Energy Holdings, and
18 MacPherson Oil.

19 MR. WICKERSHAM: Good afternoon, your
20 Honor. Matt Wickersham on behalf of Aera Energy,
21 Berry Petroleum, California Resources Corporation,
22 Chevron USA, Freeport McMoran, Linn Energy, and
23 MacPherson Oil.

24 MR. GREEN: Good afternoon, your Honor.
25 Blaine Green for Pillsbury on behalf of Western

1 States Petroleum Association as well as California
2 Independent Petroleum Association and Independent Oil
3 Producers Agency Industry.

4 MR. YEH: Good afternoon, your Honor. Jack
5 Yeh from Manatt, Phelps and Phillips on behalf of
6 California Independent Petroleum Association.

7 THE COURT: Welcome, counselors. Please be
8 seated.

9 These are motions for intervention. And I
10 went through these matters and issued a Parties to
11 Appear.

12 And I read through the statements why the
13 proposed intervenors hoped to participate, both of
14 them.

15 I read also the response by the
16 petitioners, plaintiffs, why not.

17 And I'm going to then permit the moving
18 party to explain why the court should permit
19 intervention, and I'm going to permit the responding,
20 in this case, the Petitioner, to say why not. And
21 since the intervenors have the burden, they will have
22 the last word.

23 So who is to speak on behalf of the
24 intervenors?

25 MR. WICKERSHAM: Your Honor, I would to

1 speak first.

2 THE COURT: Sure. Go ahead.

3 MR. WICKERSHAM: I believe our position is
4 pretty clear in the papers, so I'm trying to be
5 brief, and then I'll be happy to answer any question
6 that you have.

7 We believe that mandatory intervention and
8 permissive intervention, both currently evident here.

9 Our clients are the energy companies,
10 operate the vast majority of the wells, and hold the
11 permits that are currently being challenged by the
12 petitioner in this action. They are seeking to shut
13 down thousands of wells that our clients are
14 currently operating today.

15 Under the test for mandatory intervention,
16 the first point is that you must make a timely
17 motion. I don't think there is any real argument
18 that our motion has not been timely.

19 Also must have a significantly protectable
20 interest. And this is according to the test that is
21 set forth in the Arakaki case that's cited in our
22 briefs.

23 I believe here, our interest is very clear.
24 Our clients currently hold permits that give them the
25 right to inject waste water and/or produce water into

1 certain wells.

2 Petitioners have made the argument in their
3 briefs that our interest is not protectable because
4 they argue that it's illegal.

5 First, we are contesting that it is
6 illegal, but there's no need for the court to go into
7 any type of that determination now with this motion.

8 The cases they cite all concern merit
9 determinations or issues where the court has made
10 actual determinations and has determined what type of
11 relief should be required.

12 None of them have involved intervention.
13 None of them involve circumstances here where we are
14 simply asking for the opportunity to be heard on the
15 question of whether or not it is illegal and where
16 the line should be drawn between what is a legal
17 injection firm and what is not.

18 I think the Hodge case, where we cite Hodge
19 versus Kirkpatrick Development, is illustrative on
20 that point because it mentions in there that
21 pre-determination does not need to be made by the
22 court as to what types of claims or defenses are
23 available to the proposed intervenor.

24 It's sufficient that their interest may be
25 impeded or impaired as a result of this action. And

1 here it's clear that our interests would definitely
2 be substantially impeded if the petitioner would get
3 the relief that they are seeking for in their motion
4 for preliminary injunction and in their petition for
5 writ of mandate, they are asking this court to order
6 DOGGR to prohibit injection activity as currently
7 permitted by DOGGR for our clients to operate to
8 inject into wells.

9 This type of order would be a direct
10 impairment on their interest. Petitioners try to
11 draw a distinction between invoking a permit versus
12 the cessation of activities.

13 I think that the distinction -- it's not
14 really a difference for purposes of the case law in
15 terms of the liberal standard that must be applied to
16 these cases.

17 You cannot rely on these types of formulaic
18 distinctions between both your permit versus stopping
19 activities. It's clear that there's going to be an
20 impediment to our operations, and it's going to be a
21 substantial impediment to our clients' interests.

22 And finally the last issue is whether or
23 not DOGGR would adequately represent our interests.
24 And it's clear that in the case law that DOGGR is not
25 an adequate representative.

1 In this case, People versus ex rel.
2 Rominger is very useful for this purpose because it
3 has a very similar factual setting, where in this
4 case the State of California tried to sue the county
5 to invalidate some ordinances.

6 The Sierra Club, interestingly enough,
7 moved to intervene in that case. The court allowed
8 intervention, held that their interests were
9 protected and that the county in this case is not an
10 adequate representative, because the county is only
11 interested in preserving its jurisdiction, it does
12 not have the same interest as our client, or the
13 Sierra Club in that case, in the underlying activity
14 that is at stake by that ordinance, or in this case,
15 the emergency regulations.

16 DOGGR only has an interest in determining
17 its jurisdiction and in preserving its ability to
18 enact these types of regulations.

19 Our clients have an interest in maintaining
20 the operations that they have invested billions of
21 dollars in building in this state, and which could be
22 substantially interfered with by petitioner's case.

23 So if you have any questions, please ask.

24 THE COURT: Thank you, counselor. I'm
25 going to have both intervenors, and then I'll allow

1 you to respond.

2 Go ahead, counselor.

3 MR. GREEN: Thank you, your Honor, for this
4 opportunity. I am here to present on behalf of the
5 industry groups. I will keep my points relatively
6 brief. It's many of the same points you have already
7 heard from the energy companies.

8 I do want to emphasize just a few things.
9 One is that when the court is considering an
10 intervention motion, it is a practical inquiry that
11 the court is to conduct. And that's actually built
12 right into the statute of CCP387. 387(b), the
13 mandatory intervention section speaks directly to
14 that. It says that:

15 "If the person seeking intervention claims
16 an interest relating to the property to transaction
17 which is the subject of the action and that person is
18 so situated that the disposition of the action may as
19 a practical matter impair or impede that person's
20 ability to protect that interest, unless that
21 person's interest is adequately represented by the
22 existing parties, the court shall permit that person
23 to intervene."

24 For mandatory intervention, it is a
25 practical inquiry, as a practical matter here, it is

1 the oil producers and operators of these injection
2 wells of whose operations would be impacted by the
3 preliminary injunction that the plaintiff in this
4 case seeks.

5 It is not DOGGR. DOGGR doesn't own the
6 wells, doesn't operate the wells.

7 The plaintiffs are seeking an order,
8 cessation orders from DOGGR, that would then force
9 the industry groups and the energy companies to stop
10 operating.

11 As a practical matter, that's a huge
12 impairment, and for that reason, mandatory
13 intervention is warranted.

14 Finally, I want to speak briefly to the
15 adequacy of representation issues because I think
16 that's probably the biggest argument, is the argument
17 that the plaintiffs spent the most time making in
18 their opposition.

19 With regard to adequacy of representation,
20 the plaintiffs ignore many of the parts of their own
21 complaint and their motion for preliminary
22 injunction, which on their face showed that the
23 interests of oil producers and the oil industry
24 really are different from DOGGR's interests.

25 Notably, petitioners in their complaint and

1 their motion for preliminary injunction, concede that
2 DOGGR has issued cessation orders and has obtained
3 the cessation of 23 wells, 23 of these injection
4 wells.

5 Now, that shows that those cessation orders
6 had occurred independent of the emergency rulemaking
7 that the plaintiffs are challenging.

8 This emergency rulemaking, plaintiffs
9 characterize it as authorizing the continuance of the
10 injection activities while certain deadlines occur.

11 In fact, as you read the emergency
12 rulemaking carefully, what the regulations do is they
13 set the deadline by which operations must cease.

14 It's actually a shut in order or shut down
15 order by certain deadlines, date certain, unless the
16 aquifers have been exempted by those dates.

17 So it's not a continuing authorization,
18 it's a shut in schedule.

19 Now, DOGGR continues to have the ability.
20 And in fact, this is an argument that the plaintiffs
21 make in their complaint, in their motion to support
22 preliminary injunction, that DOGGR continues to have
23 the ability to order shut in prior to those
24 deadlines.

25 Again, this shows that DOGGR's interests

1 are different and potentially adverse to the oil
2 producers' interests.

3 We have made a couple of further responses
4 in terms of the adversity or potential adversity in
5 the way DOGGR doesn't represent industry group
6 interests. And I'll reply. I won't belabor the
7 points here, but we'll be happy to respond to the
8 questions the court has and the arguments that may
9 come up with that.

10 THE COURT: Very well.

11 Response?

12 MR. KRETZMANN: Good afternoon, your Honor.
13 This case is about the ongoing and illegal injection
14 that's occurring throughout the state and continues
15 every day to contaminate our precious groundwater
16 resources with benzene and other chemicals.

17 Now, each day that we wait, more and more
18 irreversible contamination is occurring. So I want
19 to emphasize for the court before we get into the
20 reasons to deny the intervention, that the relief
21 requested is very urgent and is a matter of dire
22 public in need.

23 I also want to highlight that this case is
24 very straightforward. The illegality of injections
25 in this case has been acknowledged and admitted by

1 every relevant agency.

2 The only question is -- the fundamental
3 question is: Given the admitted and widespread
4 illegality of these injections, what is DOGGR's
5 responsibility?

6 Do they have to act now to protect our
7 groundwater resources from the public or do they have
8 to act two years from now to cater to the oil
9 industry's needs.

10 DOGGR has chosen the latter. And
11 promulgating these emergency regulations, they have
12 offered a gift to the oil industry, two-year free
13 pass wherein which they do not need to comply with
14 the Safe Drinking Water Act.

15 Your Honor, that decision by DOGGR is
16 inexcusable, and that is why petitioners are before
17 you challenging that decision by the agency.

18 DOGGR has demonstrated throughout this
19 process that it is determined to fight tooth and nail
20 for the oil industry's interests. And that's yet
21 another reason to deny intervention.

22 As you have heard, the oil industry here is
23 asserting that they have a right to intervene in the
24 case.

25 And in order to be admitted to the case,

1 your Honor, they have to meet the statutory
2 obligations under mandatory or permissive
3 intervention, and they simply haven't met their
4 burden.

5 So under mandatory intervention, they first
6 need to show that they have a legally protectable
7 interest.

8 Now, they simply haven't shown that in this
9 case because we are only talking about those
10 injections that every relevant agency has admitted
11 are illegal in nature. They do not comply to the
12 Safe Drinking Water Act.

13 And let's walk through that. So three
14 simple points.

15 First: The Safe Drinking Water Act
16 prohibits the illegal injection into underground
17 sources of drinking water.

18 THE COURT: Has there been a determination
19 it's illegal?

20 MR. KRETZMANN: I'm sorry.

21 THE COURT: Has there been determination,
22 the judicial determination, that in fact the behavior
23 is illegal?

24 MR. KRETZMANN: DOGGR has admitted that
25 each of these cases --

1 THE COURT: You didn't answer my question.

2 I understand what you said. I understood
3 your papers. I understand your position. But I
4 asked this different question which is:

5 Has there been a legal determination either
6 by by the Federal Court or by the administrative
7 agency that, indeed, that what is occurring is
8 illegal?

9 MR. KRETZMANN: That is not before this
10 court, your Honor.

11 We can't go aquifer by aquifer and examine
12 whether it's qualified for an exemption --

13 THE COURT: So the answer is no.

14 MR. KRETZMANN: Again, this case cannot
15 determine whether or not these aquifers qualify for
16 an exemption.

17 THE COURT: I understand. Now, you see,
18 you started off in your argument -- and you
19 essentially said, We are going to start with the
20 position for purposes of determining that, in fact,
21 the defendants do not -- the intervenors don't have
22 an opportunity to participate.

23 We start with a statement, everybody feels
24 it's illegal. And I asked a simple question of
25 whether or not there has been a judicial

1 determination of any judicial body that, in fact, it
2 is illegal, other than the concessions or the
3 admissions or the other statements made.

4 Has there be been a determination? Because
5 that's the start of your argument, is that it's
6 illegal; and therefore if it's illegal, then they
7 don't have a right to participate or have a
8 proprietary interest in something that's illegal.
9 Right? So I needed to know that first part.

10 So has anybody made that determination?

11 MR. KRETZMANN: It's per se illegal under
12 the Safe Drinking Water Act to inject into a
13 non-exempt aquifer.

14 THE COURT: Okay. So the answer is no. No
15 judicial branch, no administrative order has
16 determined right now that the behavior is illegal.

17 MR. KRETZMANN: It has been acknowledged by
18 every agency that has looked at this matter, your
19 Honor.

20 THE COURT: You don't have to answer my
21 question. You have answered my question.

22 Go ahead. You may continue.

23 MR. KRETZMANN: The illegality of this
24 aquifer is beyond question. Even if we wanted to
25 come to that decision, we wouldn't be able to because

1 the facts aren't in front of us.

2 DOGGR has admitted that it's still
3 gathering information about what to do with these
4 aquifers.

5 Now, in light of that, this case isn't
6 about is it legal or illegal. This case is, given
7 that no determination has been made, what should we
8 be doing in the meantime? Should we be allowing
9 contamination to occur when there are no exemptions
10 in place?

11 THE COURT: In the sentence you just said,
12 "no legal determination has been made," is that no
13 determination has been made that it's illegal?

14 MR. KRETZMANN: The courts have not looked
15 at it yet because they don't have the information
16 that's required --

17 THE COURT: That was the answer to my first
18 question. And that helps. I just wanted to make
19 sure because that's what I believe occurred.

20 I believe that the behaviors, as you
21 indicated in your papers occurred.

22 I believe that, in fact, there was a
23 concession and admission or something on the part of
24 the agency.

25 I believe that as a result of that

1 acknowledgment, that 23 wells were stopped, or there
2 is some sort of intervention.

3 And I believe from your statement that
4 there are thousands yet to be resolved.

5 So if you are telling me -- and I thought
6 that that was part of your argument -- that the
7 intervenors do not have a right because, in fact, if
8 the whole behavior is illegal, therefore, they
9 wouldn't have a right to something that's illegal,
10 then I needed to know first whether or not there had
11 been a judicial determination of illegality, and then
12 that would take me to one fact, if that has yet to
13 occur, which I understand you didn't have knowledge,
14 then that takes me down a different path.

15 MR. KRETZMANN: Right. It's impossible to
16 make that call from a court's perspective because no
17 one has bothered to go through the exemption process.
18 And there is a whole lengthy exemption process where
19 you have to get DOGGR's approval, the State Water
20 Board's concurrence, written approval from EPA, the
21 Federal EPA. And none of that has occurred here. So
22 in that vacuum, where there's no evidence that the
23 exemption exists, we believe that it is per se
24 relief.

25 THE COURT: You can have that belief.

1 You may continue.

2 MR. KRETZMANN: So as I was pointing out,
3 the Safe Drinking Water Act prohibits injection into
4 an underground source of drinking water. That's
5 plain and simple.

6 Secondly, the only way around that
7 exemption is for an express and written approval for
8 an exemption from the EPA.

9 And thirdly, that approval does not exist
10 in any of these cases that we are talking about
11 today. Again, we are just limiting our case to those
12 specific injections.

13 And the illegality, as I mentioned, has
14 been acknowledged by all the agencies involved in
15 this case.

16 So DOGGR and the water board admitted in
17 February that the division acknowledges that in the
18 past it has approved underground injection projects
19 and zoned to its aquifers lacking exemptions.

20 The DOGGR and Water Board later said in
21 May, they sent a list of wells injecting into
22 non-exempt, non-hydrocarbon bearing aquifers.

23 The State Water Board confirmed in March
24 that "We believe any injection --"

25 THE COURT: I don't want to stop you,

1 but -- in fact, I do. I understand that part.

2 MR. KRETZMANN: I don't want to belabor
3 that point. I just want to point out that every
4 agency involved here is in agreement.

5 THE COURT: You understand that there is a
6 difference between evidence and the final
7 determination by a judge based upon the evidence
8 that, in fact, there is breach.

9 So you can say "I had a gun. I shot
10 someone, and as a result he died." But that isn't
11 murder until there is a determination that that
12 either could be consistent with self defense. It
13 could be consistent with all sorts of other things
14 that would otherwise show that that behavior wasn't
15 criminal or against the law.

16 So just because someone admitted -- and I
17 read what you said earlier -- of all those behaviors,
18 that doesn't lead to the final conclusion that, in
19 fact, it was illegal. It is your interpretation that
20 it was indeed illegal and that is the only way one
21 could fight it.

22 But it's that last determination that the
23 court would have to determine whether that exists in
24 order to determine whether or not they had a right.

25 MR. KRETZMANN: I'll just add that we don't

1 have to reach that final determination on the
2 aquifers in order to resolve this case.

3 This case is about DOGGR's refusal to
4 follow the law and the validity of those emergency
5 regulations.

6 THE COURT: You may or may not know that
7 this court sits and does Sequa and Water matters on a
8 regular basis and deals with the State Resources
9 Board and other environmental EPA matters on a more
10 or less regular basis. So I have an understanding of
11 how all of this works. I just have to see how this
12 fits.

13 MR. KRETZMANN: And so the oil industry has
14 not made a showing that it has met its first
15 requirement here to show that they have a legally
16 protectable interest. We are only talking about
17 illegal injection here.

18 THE COURT: And that's because it's
19 illegal?

20 MR. KRETZMANN: And we have cited the cases
21 that say that if you do not have the right to the
22 legal injection for protectable interest in illegal
23 activity.

24 THE COURT: Okay. Once is the charm to say
25 that. Okay.

1 MR. KRETZMANN: They quibble with our case
2 law that says -- that did not have to do with
3 intervention. But your Honor, the other cases that
4 we do cite on intervention do talk about this
5 requirement for a legally protectable interest that's
6 our copy, and the oil industry, and other cases cite
7 that as well.

8 This goes to the second requirement of
9 mandatory intervention, your Honor, which is that
10 their interests would have to be impaired or impeded.
11 Again, they do not have an interest to begin with,
12 that could not be --

13 THE COURT: What if they did impede?

14 MR. KRETZMANN: If they did, then that's
15 one requirement out of the four for mandatory
16 intervention.

17 THE COURT: Okay.

18 MR. KRETZMANN: The third requirement for
19 mandatory intervention is that they have to overcome
20 the presumption of adequate representation. And
21 here, your Honor, there is no clear case of adequate
22 representation between the agency and the industry
23 than DOGGR.

24 The whole reason we are here is because
25 DOGGR has put the interests, the private interests of

1 the oil industry above those of the public.

2 THE COURT: That's your conclusion.

3 MR. KRETZMANN: That's straight from DOGGR,
4 your Honor. Their whole reason for promulgating
5 these regulations, their main justification reads as
6 follows:

7 Regulated industry operators develop
8 long-range business plans with substantial capital
9 investments based around the operation of injection
10 wells. Codification of the compliance schedule will
11 provide the level of certainty operators need to
12 revise their business plans accordingly.

13 And it goes on to mention --

14 THE COURT: This is the governmental agency
15 explaining why they created the orders that they did?

16 MR. KRETZMANN: That's correct.

17 THE COURT: Okay.

18 MR. KRETZMANN: And then not only in the
19 explanation of why they created regulations, but also
20 in their opposition to our preliminary injunction
21 they did make clear that the reason they are opposing
22 our lawsuit is to protect the interests of the oil
23 companies.

24 They cite to the industry's investments,
25 the capital investments, they need to protect those.

1 They cite to their own statutory duty to
2 encourage the wise development of oil and gas
3 resources.

4 THE COURT: Right.

5 MR. KRETZMANN: So it's clear, your Honor,
6 that this is a quintessential case where the
7 industry's interests are represented by DOGGR.

8 The very private interest that they alleged
9 will not be represented --

10 THE COURT: Do you have any other cases
11 where a government agency similar to this
12 organization was considered to be adequate to
13 represent the agencies, to represent the oil
14 companies?

15 MR. KRETZMANN: What do you mean?

16 THE COURT: Well, you are suggesting that
17 this governmental agency, who indicated in their
18 record why it is that they made the governmental
19 decision that they did.

20 Do you have any other examples where other
21 similar governmental organizations were determined to
22 be so captured by the private industry that the
23 representation -- the governmental agency would --
24 and its behaviors -- would be satisfactory to protect
25 the civil rights of the private industries?

1 MR. KRETZMANN: I can point to Arakaki,
2 which the state government was representing the
3 state's interest, but there was a would-be intervenor
4 who went through the private pecuniary interests, and
5 the court determined there that it did not meet the
6 burden of showing, or making a very compelling
7 showing, the state did not adequately represent this.

8 THE COURT: Okay. So do you have any other
9 organizations where -- I can't think of another
10 organization right off the top, but where your
11 position is being supported that a governmental
12 agency made a decision, gave the reasons that it is
13 because of those reasons, therefore, the agency --
14 the area that they are responsible to oversee no
15 longer has standing?

16 Do you have anything like that?

17 MR. KRETZMANN: Not on all fours with that,
18 your Honor, but I think this is a fairly unique
19 situation where we have an agency that the purpose of
20 these regulations was to protect the oil industry,
21 and they made that clear from their reasons that they
22 gave as justification. They made that clear from
23 their opposition brief.

24 THE COURT: So, let's see. I don't know
25 much about this board. Was it selected by the

1 governor?

2 MR. KRETZMANN: The Division of Oil and Gas
3 and Geothermal Resources, I believe it's appointed by
4 the governor and within the executive branch.

5 THE COURT: And it's under what portion of
6 the executive branch?

7 MR. KRETZMANN: It's housed within the
8 Department of Conservation.

9 THE COURT: Okay. So it's the Department
10 of Conservation, and they have this subgroup, which
11 is this group, and the people there are appointed by
12 the governor --

13 MR. KRETZMANN: Yes.

14 THE COURT: -- I would imagine. And there
15 is some sort of review.

16 And you are suggesting that that
17 organization is sufficient to represent, in this
18 proceeding, the potential intervenors.

19 MR. KRETZMANN: Yes, your Honor.

20 The Simpson Redwood Company points out that
21 when you are looking at intervention, you do a case
22 by case and look at the facts at issue.

23 So in this case it's clear that we are just
24 talking about those wells that DOGGR refuses to
25 address and allows to continue.

1 THE COURT: Okay. You may continue.

2 MR. KRETZMANN: In their briefs, the oil
3 companies point to -- attempt to make a distinction
4 between their interests and the interests of DOGGR,
5 as the case has made clear, when you look at the
6 ultimate objective of the parties, and it's clear
7 that those are perfectly aligned here.

8 Anything having to do with differences in
9 strategy and litigation tactics, that's not enough to
10 rise to the level to rebut that presumption of
11 adequate representation.

12 Industry groups make similar claims that
13 their interests would somehow diverge from DOGGR's.
14 I'll address those here briefly.

15 The 23 wells that were shut down by DOGGR,
16 I don't think is proof that their interests would
17 diverge in this case.

18 We are talking about the ones that they
19 refuse to address, the ones that are continuing in
20 this day and age, are going to allow to continue for
21 another --

22 THE COURT: Let's say that this court were
23 to grant your request and tell DOGGR that they have
24 to change their behavior. Do you think the oil
25 companies would sue them?

1 MR. KRETZMANN: I can't make a prediction,
2 your Honor. I think that --

3 THE COURT: Well, I think they would
4 because I'm trying to determine on a case-by-case
5 basis whether indeed they are of the same
6 representation or whether they have divergent
7 interests.

8 It seems to me that -- I'm having a
9 difficult time, and that's probably where my
10 questions are -- define whether there's an identity
11 of interest between DOGGR and these industries.

12 But the court struggles with this in
13 another context. For example, if you are dealing in
14 depositions and determining whether or not you
15 have -- you didn't appear at the deposition, but you
16 nevertheless -- they wanted all the information in
17 the deposition against your client, then there has to
18 be a determination whether or not there was a
19 sufficient identity of the people that were at the
20 deposition, or the people who wanted to determine
21 whether or not they had an opportunity to ask the
22 questions.

23 I mean, those are the types of issues of
24 identity that the court struggles with, and I have
25 that struggle here to determine whether or not DOGGR

1 would do a good job or even care about the interests
2 of the individual intervenors in this case, whether
3 they would do what they are required to do under the
4 charter, which is do the government things that they
5 are responsible to do. That's the problem that I
6 have with that.

7 MR. KRETZMANN: Yeah, I think it's very
8 apparent in this case of what their interest are.
9 Not only are they bending over backwards for the
10 industry by openly allowing violations of the Safe
11 Drinking Water Act to continue, but they are actively
12 violating the law for a very narrow interest that the
13 oil industry is.

14 You can't make the argument that allowing
15 illegal injection that continues to contaminate our
16 state's groundwater resources is somehow in the
17 public's interest.

18 THE COURT: Right. Anything more?

19 MR. KRETZMANN: Furthermore, your Honor,
20 DOGGR also has a statutory duty under 3106(b), which
21 states that they must permit owners or operators of
22 the wells to utilize all methods and practices known
23 to the oil industry for the purpose of increasing the
24 ultimate recovery of underground hydrocarbons.

25 So they have a statutory duty to protect

1 those interests, and that puts it increasing --

2 THE COURT: Can DOGGR take a position
3 against the intervenors?

4 MR. KRETZMANN: Can they?

5 THE COURT: Can they?

6 MR. KRETZMANN: It's pretty clear from this
7 case that they would not.

8 THE COURT: No. I didn't ask that
9 question. You see, because I'm determining what
10 rights and relationships, not what they -- I can't
11 predict their future, but I have to determine whether
12 or not DOGGR could tell -- could force, could reduce
13 the rights of these potential intervenors.

14 That's why I asked the question whether or
15 not they could be sued or would be sued as a result
16 of you winning.

17 And I think the answer to both of those is
18 rhetorical because the answer is that indeed if what
19 is forced upon DOGGR affects the proprietary or
20 property interests of these intervenors, they would
21 have probably an obligation or right to sue them for
22 doing something improper.

23 Or I think that DOGGR could make a decision
24 that they, in order to carry out their mission, they
25 would have to sue or punish these intervenors, they

1 would do that too. And I think that as the public
2 agency, they would be required to do that.

3 MR. KRETZMANN: It's possible that in the
4 future that might arise, your Honor. But I think for
5 the purposes of this intervention motion, we should
6 be looking at the interests of -- with respect to the
7 claims before the court.

8 THE COURT: Okay. Anything else?

9 MR. KRETZMANN: I'll add, too, that there
10 is a separate administrative appeal process for any
11 permits that are challenged. So there is a different
12 forum for that.

13 THE COURT: Okay.

14 MR. KRETZMANN: Finally, your Honor, the
15 prerequisites considering any of the factors for
16 mandatory intervention is timeliness. The oil
17 industry had every opportunity to file its motion and
18 keep our preliminary hearing on track, and they
19 waited for three weeks in order to do that now.

20 Now, timeliness is all about context. And
21 so what's reasonable delay in some cases would not be
22 reasonable in others.

23 Here, we are talking about more and more
24 contamination occurring every day, and for that
25 reason, they failed to meet that requirement as well.

1 Now, failing to meet any of those four
2 requirements is ample grounds to reject mandatory
3 intervention, and they haven't met a single one of
4 those.

5 THE COURT: Okay.

6 MR. KRETZMANN: In terms of permissible
7 intervention, they also alleged that they should be
8 allowed to intervene by discretion of the court.
9 Here again, the factors under permissive intervention
10 weigh heavily in favor of denying the intervention.

11 First, the direct and immediate interest,
12 we discussed that already. It should not have an
13 interest, direct, immediate or otherwise, in what's
14 acknowledged to be violations of the Safe Drinking
15 Water Act.

16 Second, the court looks at whether or not
17 they would enlarge the issues in the case. And from
18 their motions to intervene, I think it's pretty clear
19 that they are attempting to introduce a lot of
20 complexity and unnecessary extraneous issues into
21 what is really a very straightforward case.

22 So for example, they mention that --

23 They talk about the contamination that may
24 or may not have been found in nearby water supply
25 wells.

1 Now, that is completely irrelevant to the
2 provisions that we are talking about here. We are
3 talking about direct injections into protected
4 sources of drinking water.

5 That's what's prohibited by the Safe
6 Drinking Water Act period. Now whether that
7 contamination overtime ends up in a nearby water
8 supply well, in a different aquifer is a separate
9 question and it is not before the court today.

10 The attempts to bring that into this case,
11 is a transparent attempt to add undue complexity.
12 And there are several examples of that, your Honor.

13 Thirdly, under permissive intervention,
14 they have to show that the reasons for intervention
15 would outweigh the interests of the parties.

16 Now, here we are talking about the narrow,
17 private interests of the oil companies versus public
18 interests, which under Sonoma v Rex, public interests
19 generally outweighs the interest of private
20 interests, the private parties.

21 The industry interests here, again, per se,
22 illegal, versus public's interests in protecting our
23 state's groundwater supplies.

24 The relative weight of those interests,
25 your Honor, could not be farther apart. And for that

1 reason, the third requirement or factor in the
2 permissive intervention also weighs in favor of
3 denying intervention.

4 And finally, had the proper procedures been
5 followed, I'll just add here that the industry groups
6 failed to attach their complaint in intervention. We
7 didn't get that until after our opposition was filed.
8 I think that's pretty prejudicial. Other cases have
9 found the failure to attach a complaint as ample
10 grounds to deny intervention, and should be ample
11 grounds here.

12 So, your Honor, in conclusion, the oil
13 industry has not met their burden, either under
14 mandatory or permissive intervention here, and for
15 those reasons you should deny.

16 THE COURT: Thank you, Counsel.

17 Moving parties?

18 MR. WICKERSHAM: Your Honor, I just have a
19 few quick points.

20 First, the interest of the energy companies
21 in this litigation is pretty clear.

22 We have submitted declarations from each of
23 the companies. I'll just read briefly from one of
24 them, which has language similar to --

25 THE COURT: You need not. I read them.

1 MR. WICKERSHAM: Okay. Then, your Honor, I
2 will move on.

3 On the point that DOGGR is an adequate
4 representative, it should be probably apparent, but
5 being that they argue in the first part that DOGGR
6 has acknowledged that energy companies have no
7 interest in this case, and then they argue that DOGGR
8 was representing the energy companies at some point
9 when they made those statements, since we do not
10 agree that we do not have any interest in these
11 injection activities, it's pretty clear that DOGGR
12 was not acting as our representative.

13 Even taking accurate view of what the
14 evidence is that they are going to rely on in this
15 case, you cannot argue that DOGGR is acting as a
16 representative when it is intending to preserve its
17 jurisdiction and is not at the same stake in the
18 underlying activities as the energy companies do.

19 And for that point, I would like to briefly
20 look at -- well, direct you to the People ex rel.
21 Rominger case to talk about the fact that we should
22 not be prohibited from being in litigation to
23 determine the interest of the oil industry.

24 THE COURT: Okay. Anybody else?

25 MR. GREEN: Just briefly, your Honor.

1 First, about DOGGR fighting tooth and nail
2 and having the opposition of preliminary injunction
3 that represents industry group interests, your Honor,
4 when you review the DOGGR opposition, what you will
5 see is that when it talks about the balancing of harm
6 and reasons why an injunction should not be granted
7 because you have to weigh the harm to public, it does
8 look at the harm to the public. It doesn't actually
9 talk about the harm to industry and oil production.
10 It's critical that the oil industry had an
11 opportunity to discuss that harm.

12 Second point out of the three is the
13 Arakaki case. The Arakaki case talks about a
14 presumption of adequate representation when an agency
15 has its constituency, as the proposed intervenor as
16 its constituency.

17 In the Arakaki case, it was the State of
18 Hawaii, there was a constitutional provision that
19 required the state to direct certain benefits to
20 native Hawaiians. And it was a group of native
21 Hawaiians that was seeking to intervene.

22 In that case, there was another group of
23 native Hawaiians who had already been permitted to
24 intervene.

25 And the court said, Well, since you are

1 already represented by the state because the state
2 has your constituency by constitution, and you have
3 already got another group in here, you don't need to
4 be part of it.

5 The third point is the concept that said
6 there's perfect alignment between industry groups and
7 DOGGR. And your Honor has already discussed that
8 issue extensively with counsel for the plaintiffs.

9 But one of the other things that plaintiffs
10 ignore is that the industry groups aren't in this
11 litigation to defend the emergency regulations, the
12 points that we made in our papers. We are here to
13 defend against the shut in by preliminary injunction
14 of these injection wells.

15 Thank you.

16 THE COURT: Thank you very much,
17 Counselors. I reviewed my notes and you'll get my
18 decision by Wednesday.

19 That will do it. Thank you, Counsel.

20 MR. KRETZMANN: If I might add one more
21 thing.

22 THE COURT: No, because he gets the last
23 word. Moving party gets the last word.

24 (Proceedings concluded at 4:43 p.m.)

25 --oOo--

REPORTER'S CERTIFICATE

I, KATHRYN LLOYD, CSR No. 5955, Certified
Shorthand Reporter, certify:

That the foregoing proceedings were taken before
me at the time and place therein set forth;

That the statements of the parties made at the
time of the proceedings were recorded
stenographically by me and were thereafter
transcribed;

That the foregoing is a true and correct
transcript of my shorthand notes so taken.

I further certify that I am not a relative or
employee of any attorney of the parties, nor
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correct.

Dated this ____ day of ____, 2015.

KATHRYN LLOYD, CSR 5955

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PROOF OF SERVICE BY ELECTRONIC TRANSMISSION

I, Lilia H. Jackson, the undersigned, hereby declare as follows:

1. I am over the age of 18 years and am not a party to the within cause. I am employed by Pillsbury Winthrop Shaw Pittman LLP in the City of San Francisco, California.

2. My email and business addresses are lilia.jackson@pillsburylaw.com; Four Embarcadero Center, 22nd Floor, San Francisco, CA 94111-5998. My mailing address is Four Embarcadero Center, 22nd Floor, San Francisco, CA 94126-2824.

3. On June 19, 2015, at Four Embarcadero Center, 22nd Floor, San Francisco, CA 94111-5998, I served a true copy of the attached document titled exactly

**INDUSTRY GROUPS' REQUEST FOR JUDICIAL NOTICE OF
TRANSCRIPT OF COURT HEARING IN OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION**

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I declare under penalty of perjury that the foregoing is true and correct. Executed this 19th day of June, 2015, at San Francisco, California.

Lilia H. Jackson